

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR
POST-CONVICTION CONSIDERATION OF DNA EVIDENCE; ENACTING A NEW
SECTION OF THE CRIMINAL PROCEDURE ACT; REPEALING A SECTION OF
THE NMSA 1978; PROVIDING FOR A DELAYED REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Procedure Act
is enacted to read:

"PROCEDURES FOR POST-CONVICTION CONSIDERATION OF DNA
EVIDENCE--REQUIREMENTS. --

A. A person convicted of a felony, who claims that
DNA evidence will establish his innocence, may petition the
district court of the judicial district in which he was
convicted to order the disclosure, preservation, production
and testing of evidence that can be subjected to DNA testing.
A copy of the petition shall be served on the district
attorney for the judicial district in which the district
court is located.

B. As a condition to the district court's
acceptance of his petition, the petitioner shall:

- (1) submit to DNA testing ordered by the
district court; and
- (2) authorize the district attorney's use of
the DNA test results to investigate all aspects of the case

1 that the petitioner is seeking to reopen.

2 C. The petitioner shall show, by a preponderance
3 of the evidence, that:

4 (1) he was convicted of a felony;

5 (2) evidence exists that can be subjected to
6 DNA testing;

7 (3) the evidence to be subjected to DNA
8 testing:

9 (a) has not previously been subjected
10 to DNA testing;

11 (b) has not previously been subjected
12 to the type of DNA testing that is now being requested; or

13 (c) was previously subjected to DNA
14 testing, but was tested incorrectly or interpreted
15 incorrectly;

16 (4) the DNA testing he is requesting will be
17 likely to produce admissible evidence; and

18 (5) identity was an issue in his case or
19 that if the DNA testing he is requesting had been performed
20 prior to his conviction and the results had been exculpatory,
21 there is a reasonable probability that the petitioner would
22 not have pled guilty or been found guilty.

23 D. If the petitioner satisfies the requirements
24 set forth in Subsection C of this section, the district court
25 shall appoint counsel for the petitioner, unless the

1 petitioner waives counsel or retains his own counsel.

2 E. After reviewing a petition, the district court
3 may dismiss the petition, order a response by the district
4 attorney or issue an order for DNA testing.

5 F. The district court shall order all evidence
6 secured that is related to the petitioner's case and that
7 could be subjected to DNA testing. The evidence shall be
8 preserved during the pendency of the proceeding. The
9 district court may impose appropriate sanctions, including
10 dismissal of the petitioner's conviction or criminal
11 contempt, if the court determines that evidence was
12 intentionally destroyed after issuance of the court's order
13 to secure evidence.

14 G. The district court shall order DNA testing if
15 the petitioner satisfies the requirements set forth in
16 Subsections B and C of this section.

17 H. If the results of the DNA testing are
18 exculpatory, the district court may set aside the
19 petitioner's judgment and sentence, may dismiss the charges
20 against the petitioner with prejudice, may grant the
21 petitioner a new trial or may order other appropriate relief.

22 I. The cost of DNA testing ordered pursuant to
23 this section shall be borne by the state or the petitioner,
24 as the district court may order in the interest of justice.

25 Provided, that a petitioner shall not be denied DNA testing

1 because of his inability to pay for the cost of DNA testing.
2 Testing under this provision shall only be performed by a
3 laboratory that meets the minimum standards of the national
4 DNA index system.

5 J. The provisions of this section shall not be
6 interpreted to limit:

7 (1) other circumstances under which a person
8 may obtain DNA testing; or

9 (2) post-conviction relief a petitioner may
10 seek pursuant to other provisions of law.

11 K. The petitioner shall have the right to appeal a
12 district court's denial of the requested DNA testing, a
13 district court's final order on a petition or a district
14 court's decision regarding relief for the petitioner. The
15 state shall have the right to appeal any final order issued
16 by the district court. An appeal shall be filed by a party
17 within thirty days to the court of appeals.

18 L. The state shall preserve all evidence that is
19 secured in relation to an investigation or prosecution of a
20 crime and that could be subjected to DNA testing, for not
21 less than the period of time that a person remains subject to
22 incarceration or supervision in connection with the
23 investigation or prosecution.

24 M. The state may dispose of evidence before the
25 expiration of the time period set forth in Subsection K of

1 this section if:

2 (1) no other law, regulation or court order
3 requires that the evidence be preserved;

4 (2) the evidence must be returned to its
5 rightful owner;

6 (3) preservation of the evidence is
7 impractical due to the size, bulk or physical characteristics
8 of the evidence; and

9 (4) the state takes reasonable measures to
10 remove and preserve portions of the evidence sufficient to
11 permit future DNA testing.

12 N. As used in this section, "DNA" means
13 deoxyribonucleic acid."

14 Section 2. REPEAL. --Section 31-1A-1 NMSA 1978 (being
15 Laws 2001, Chapter 29, Section 1) is repealed.

16 Section 3. DELAYED REPEAL. --Section 1 of this act is
17 repealed effective July 1, 2006.

18 Section 4. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 2003. _____

20
21
22
23
24
25